



Criminal Defense Attorneys of Michigan

P.O. Box 18098, Lansing, MI 48901-8098 • 517-579-0533 • www.cdamonline.org

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The Honorable Marilyn J. Kelly
Michigan Supreme Court
Post Office Box 30052
Lansing, Michigan 48909

re: *ADM File No. 2009-19*

Dear Chief Justice Kelly:

I am writing, on behalf of the Rules and Laws Committee of the Criminal Defense Attorneys of Michigan, to comment on the portion of ADM File No. 2009-19 that would eliminate late appeals and shorten time limits on applications for leave to appeal (Proposed Amendments of MCR 6.425, 7.204, and 7.205). The Committee opposes these amendments because of the effect on guilty plea appeals. Our clients who wish to withdraw their pleas or challenge their sentences after pleading guilty or no contest will lose their right to properly appeal.

In Michigan, there is a constitutional right to appeal by leave a plea conviction. Mich. Const., Art. 1, § 20. Appellants who wish to challenge their plea or sentence need to file an application for leave to appeal on the merits prior to the expiration of a jurisdictional deadline. This proposal wrongly treats guilty plea appeals as trial appeals, where filing of paperwork establishes a claim of appeal, and merit briefs are not due until after production of transcripts. The different nature of guilty plea appeals mean that under the proposed amendments, merit briefs will need to be filed **before** transcripts are produced for plea and sentencing proceedings.

Currently, guilty plea appeals are filed within a year through a delayed application for leave to appeal. The proposals instead allow 21 days plus a 21 or 35 day excusable neglect extension for leave applications, and eliminate delayed applications. This time limit practically guarantees that guilty plea appeals will be due before plea and sentencing transcripts are available. As different counsel represent indigent clients on appeal, counsel for the poorest criminal defendants will have filing deadlines before they have any familiarity with the trial court record.

The proposal attempts to respond to this concern by also setting the deadline in relation to orders deciding a motion for plea withdrawal, MCR 6.310(C), or resentencing in the trial court, MCR 6.429(B)(3). However, where trial counsel preserves plea withdrawal or resentencing issues, these motions will be improper. The amendments then set-up a system where

preservation of appellate issues by competent trial counsel could result in forfeiture of the appeal.

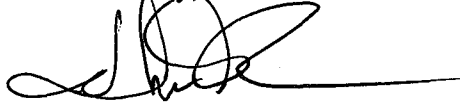
In addition to the denial of the constitutional right to appeal for certain guilty plea defendants, the proposals will greatly increase frivolous filings and inefficiency in both trial and appellate courts. Appellate counsel will have two options: either file incomplete filings in the Court of Appeals before transcripts are prepared, without a proper knowledge of the record; or file motions for resentencing or plea withdrawal in trial court that may well have been already adjudicated. Unnecessary filings and court proceedings will occur for almost every guilty plea appeal. Appellate counsel's lack of knowledge of the record before filing and consultation with their client also means far fewer voluntary dismissals of guilty plea appeals.

CDAM is concerned that the proposals would chill representation of indigent guilty plea clients on appeal. The State Appellate Defender Office receives approximately 25% of indigent appeal appointments, while attorneys on the roster of the Michigan Appellate Assigned Counsel System (MAACS) take the remaining cases. MAACS attorneys often make significant financial sacrifices to represent these indigent clients on appeal. With such limited appellate deadlines, few attorneys would volunteer to represent these most needy clients because of the risk of missing the deadlines and offering ineffective representation.

The elimination of the delayed application procedure will also impact appeals of MCR 6.500 postconviction motions. These too are substantive pleadings, often filed in complex cases. Requiring movement from denial by the trial courts, which can sometimes involve a lengthy wait, to the court of appeals within 21 days, will be an onerous burden to place on criminal appellate defense lawyers with heavy caseloads. If this Court is going to eliminate the delayed application procedure, it would be better to set the time limit, as was done previously in this Court, at a single 56 day period without involving additional process for extensions for "excusable neglect." In any event, "excusable neglect" should minimally be replaced with "good cause shown" as many times there will be no neglect involved in a need for more than 21 days to prepare a complex substantive pleading, given illness, vacations and heavy caseloads.

In short, the Rules and Laws Committee believes the appellate deadlines proposals are unconstitutional, inefficient, and an obstacle to effective representation on appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Shea', with a long horizontal flourish extending to the right.

John A. Shea, Co-Chair
Rules and Laws Committee
Criminal Defense Attorneys of Michigan

cc: Corbin R Davis, Clerk, Michigan Supreme Court